

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 458 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIBHAKTI RANESWAR MAHADEV CHARITABLE TRUST

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

MR NK MAJMUDAR for Petitioner
MR PRANAV G DESAI for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
NOTICE SERVED for Respondent No. 4
MR NILESH A PANDYA for Respondent No. 6

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 12/03/98

ORAL JUDGEMENT

Heard the learned Advocates for the parties.
During the course of deposition of the plaintiff-petitioner, the prayer to exhibit documents mark Exh.4/7 and 129/2 - xerox copies of the notice has

been rejected by the impugned order dated 28.10.1996. The learned Judge, in para 4 of the order, has found some dissimilarities in the documents mark 4/7 and mark 129/2. The learned Judge has also observed that in view of the dissimilarities, the documents cannot be permitted to be exhibited at this stage. I do not understand what will be the other stage when these documents can be exhibited. Mr Nilesh Pandya, learned Advocate appearing for respondent No.6 submits that the order directing not to exhibit the documents, cannot be said to be an error of jurisdiction which calls for interference by this Court in exercise of powers under section 115 CPC. He placed reliance on a decision reported in 1984 GLH UJ 41. I have gone through the said judgment. It does not apply to the facts of the present case. The learned Judge has committed material illegality in exercise of jurisdiction in refusing to exhibit documents Mark 4/7 and 129/2 on the ground that there is some dissimilarity in the said documents. The learned Judge has not declined to exhibit the said documents. But he has said that the said documents cannot be exhibited at this stage. In my view, the illegality is of the nature that if allowed to stand, it would amount to failure of justice to the petitioner. If there is any dissimilarity in the said two documents and as such whether any reliance can be placed on such documents, can be a matter of arguments and decision at the stage of final hearing of the case.

2. In view of the aforesaid, this Revision application is allowed and the impugned order dated 28.10.1996 is quashed and set aside. The plaintiff shall be called back for recording of further evidence only to the limited extent of exhibiting documents mark 4/7 and 129/2. Defendant will also be given opportunity to cross-examine on the said limited deposition. It will be open for the Court to examine evidentiary value of the said documents on account of dissimilarity at the final stage of hearing. Rule made absolute to the aforesaid extent.

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msp